

**REMARKS**

Claims 1-24 were pending in this application.

Claims 1, 6, 7, 12, 13, and 19 have been rejected.

Claims 2-5, 8-11, 14-18, and 20-24 have been objected to.

Claims 1-4, 7-10, 12-16, 18-22, and 24 have been amended as shown above.

Claims 5, 11, 17, and 23 have been cancelled.

Claims 25-28 have been added.

Claims 1-4, 6-10, 12-16, 18-22, and 24-28 are now pending in this application.

Reconsideration and full allowance of Claims 1-4, 6-10, 12-16, 18-22, and 24-28 are respectfully requested.

**I. ALLOWABLE SUBJECT MATTER**

The Applicants thank the Examiner for the indication that Claims 2-5, 8-11, 14-18, and 20-24 would be allowable if rewritten in independent form.

The Applicants have amended Claims 1, 7, 13, and 19 to incorporate various elements of the allowable claims. The Applicants respectfully submit that these amendments place Claims 1, 7, 13, and 19 in condition for allowance.

Accordingly, the Applicants respectfully request full allowance of Claims 1, 7, 13, and 19 (and their dependent claims).

**II. REJECTION UNDER 35 U.S.C. § 103**

The Office Action rejects Claims 1, 6, 7, 12, 13, and 19 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,845,485 to Shastri et al. (“*Shastri*”) in view of U.S. Patent No. 6,742,163 to Ono et al. (“*Ono*”). This rejection is respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. (*MPEP* § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992)). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. (*MPEP* § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984)). Only when a *prima facie* case of obviousness is established does the burden shift to the Applicant to produce evidence of nonobviousness. (*MPEP* § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993)). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the Applicant is entitled to grant of a patent. (*In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985)).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. (*In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993)). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the

references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on the Applicant's disclosure. (*MPEP* § 2142).

As noted above, the Applicants have amended Claims 1, 7, 13, and 19 to incorporate various elements of allowable claims. Because of this, the Applicants respectfully submit that Claims 1, 7, 13, and 19 are patentable over the proposed *Shastri-Ono* combination.

Accordingly, the Applicants respectfully request withdrawal of the § 103 rejection and full allowance of Claims 1, 7, 13, and 19 (and their dependent claims).

### **III. NEW CLAIMS**

The Applicants have added new Claims 25-28. The Applicants respectfully submit that no new matter has been added. At a minimum, the Applicants respectfully submit that Claims 25-28 are patentable for the reasons discussed above. The Applicants respectfully request entry and full allowance of Claims 25-28.

### **IV. CONCLUSION**

The Applicants respectfully assert that all pending claims in this application are in condition

**DOCKET NO. US000163  
SERIAL NO. 09/616,631  
PATENT**

for allowance and respectfully request full allowance of the claims.

DOCKET NO. US000163  
SERIAL NO. 09/616,631  
PATENT

**SUMMARY**

If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *wmunck@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication (including any extension of time fees) or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

DAVIS MUNCK, P.C.

Date: July 18, 2005



William A. Munck  
Registration No. 39,308

P.O. Drawer 800889  
Dallas, Texas 75380  
Phone: (972) 628-3600  
Fax: (972) 628-3616  
E-mail: *wmunck@davismunck.com*